

REMARKS

This is a full and timely response to the outstanding nonfinal Office Action mailed January 2, 2002. Reconsideration and allowance of the application and presently pending claims, as amended, are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-32 and 34-50 remain pending in the present application. More specifically, claims 1-20, 22, 23, 35, 39, 43 and 47 are directly amended and claim 33 is canceled without prejudice, waiver, or disclaimer. These amendments are specifically described hereinafter. It is believed that the foregoing amendments add no new matter to the present application.

2. Miscellaneous Issues

The Office may wish to note that the presently pending Patent Application is related to commonly assigned co-pending Application Serial Numbers 09/858,020 (filed May 15, 2001) and 09/932,766 (filed August 17, 2001). In these applications it is made clear that the expanded sodium perborate (ESPB) of the present invention is of a different physical structure and different chemical characteristics, and is formed by a different method, than anhydrous sodium perborate, or sodium peroxoborate, of the cited references.

Additionally, claim 33 is canceled without prejudice, waiver, or disclaimer. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance of other claims in the present application. Applicants reserve the right to pursue the subject matter of the canceled claim in a continuing application, if Applicants so choose, and do not intend to dedicate any of the canceled subject matter to the public.

3. Response To Rejections

Response To Claim Rejections Under 35 U.S.C. Section 112, Second Paragraph

Claims 1-50 have been rejected under 35 U.S.C. Section 112, second paragraph, as allegedly being indefinite. The Office asserts that the term "compound" in claims 1-50 is used by the claim to mean "a composition with sodium perborate and a liquid," while the accepted meaning is different. Claim 33 has been canceled, thus rendering moot this rejection. Without addressing the veracity of the Examiner's contention, Applicants have amended claims 1-20, 22, 23, 35, 39, 43 and 47 to replace the term "compound" with the term "composition."

Claim 19 was allegedly confusing to the Office "because it is a method for making an effervescent compound, however none of the steps of the claim include any effervescent compound." Claim 19 has been amended to replace the phrase "a carrier" with the phrase "an effervescent carrier." Thus, the rejection of claim 19 may now be withdrawn. Further, the Office alleges that claims 35, 39, 43 and 47 are confusing because they refer to "the compound" that is not defined. Claims 35, 39, 43 and 47 have

been amended to add the term "composition" to the preamble. Thus, the term "composition" in the body of the claims has proper antecedent basis in the preamble of each of the claims. Applicants believe that they have traversed the rejections and respectfully request that the rejections be withdrawn.

Response To Double Patenting Rejection

Claims 1-16 of this application allegedly conflict with claims 1-16 of Application No. 09/802,591 (the '591 Application). The Office requests that Applicants either cancel the conflicting claims from all but one application, or maintain a clear line of demarcation between the applications. The present application is a continuation-in-part (CIP) of the '591 Application. Upon receipt of a Notice of Allowance of the claims of the present application, Applicants plan to abandon the parent, the '591 Application.

Claims 1-50 are provisionally rejected under the judicially-created doctrine of double patenting over claims 1-37 of co-pending Application No. 09/813,620. In response to the double patenting rejection, Applicants submit herewith a terminal disclaimer pursuant to 37 C.F.R. §1.321(c). Applicants have submitted the terminal disclaimer solely to advance prosecution of the application, without conceding that the double patenting rejection is properly based. In filing the terminal disclaimer, Applicants rely upon the rulings of the Federal Circuit that the filing of such a terminal disclaimer does not act as an admission, acquiescence or estoppel on the merits of the obviousness issue. See, e.g., *Quad Environmental Tech v. Union Sanitary Dist.*, 946 F.2d 870, 874-

875 (Fed. Cir. 1991); and *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

Response To Claim Rejections Under 35 U.S.C. Section 102

Claims 1, 5, 10, 12, 17-19, 24 and 33-37 have been rejected under 35 U.S.C. Section 102(b) as allegedly anticipated by Kemper et al. (EP 53,859), Bailly et al. (WO 99/58444) and Green et al. (U.S. Patent No. 4, 772, 412). Claim 33 has been canceled, thus rendering its rejection moot. With respect to claims 1, 5, 10, 12, 17-19, 24 and 34-37, for a proper rejection of a claim under 35 U.S.C. Section 102(b), the cited references must disclose all elements/features/steps of the claims. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

Independent claims 1, 19 and 35 are allowable for at least the reason that the cited references do not disclose, teach, or suggest certain features of independent claims 1, 19 and 35. More specifically, independent claims 1 and 19 have been amended to recite that the liquid ingredient comprises “from more than 0%....” Thus, claims 1 and 19 now encompass more than sodium perborate, which the Office alleges is a well-known compound. In addition, Applicants wish to note that they are not claiming sodium perborate, but instead are claiming expanded anhydrous sodium perborate, which has not been known heretofore in the art.

Further, Kemper et al. does not disclose or teach the element of independent claims 1 and 19, of a carrier that is or includes “expanded anhydrous sodium perborate” (ESPB).

Claims 1 and 19 specifically recite this element. Kemper et al. discloses bleach activator granules including sodium peroxoborate, which is not the same composition as ESPB of the present invention. ESPB is a different composition that is formed by a different method than sodium peroxoborate. ESPB has a different physical structure, and exhibits different chemical characteristics than the sodium peroxoborate disclosed in Kemper et al. The differences are disclosed more completely in copending and commonly assigned U.S. Patent Application Nos. 09/932,766, and 09/858,020. For example, the sodium peroxoborate of Kemper et al. is formed by heating sodium perborate, monohydrate, up to approximately 120°C, which produces a mixture of sodium peroxoborate and sodium perborate monohydrate. See page 5, lines 4-16. In contrast, ESPB used in the composition of independent claims 1, 19 and 35 is formed by heating *above* 120°C and produces a relatively pure form of ESPB, that is not mixed with sodium perborate, monohydrate by-product or starting material. See related Patent Application No. 09/932,766. Further, the '020 and '766 Applications directly contrast ESPB with prior art sodium perborate and oxborate with respect to density, porosity, liquid loading ability and bleaching characteristics.

ESPB, prepared by dehydration of sodium perborate monohydrate, "is surprisingly very easy to tablet, and maintains its flow and tableting characteristics after adsorbing up to its own weight in liquid. Further, the amount of effervescence is potentially sufficient to eliminate the need for additional effervescent materials, permitting effervescent tablets, granules or powders to be produced that contain up to 50% liquid ingredient." See present

application specification, page 4, lines 8-12. By using ESPB as the carrier to hold all liquid ingredients for the tablet, liquids or surfactants may be loaded at high levels into effervescent products, which were heretofore unobtainable using traditional sodium perborate monohydrate and sodium peroxoborate that is disclosed in Kemper et al., Baillely et al. and Green et al. In addition, Kemper et al. does not disclose using oxoborate as a carrier for liquid ingredients, because all of the ingredients in its disclosed composition are dry. Thus, Kemper et al. does not anticipate claims 1, 19 and 35.

In Baillely et al. the anhydrous sodium perborate disclosed and used in the detergent compositions is not ESPB of the present invention, as claimed in claims 1, 19 and 35. Baillely et al. is merely directed to melting wax and using it to coat oxoborate granules. Nothing in Baillely et al. discloses or suggests the use of ESPB in its cleaning composition as a carrier for loading any liquid, much less high levels of liquids. Thus, Baillely et al. does not anticipate claims 1, 19 and 35.

Further, with respect to Green et al., the anhydrous sodium perborate of Green et al. is formed as a mixture with sodium perborate, monohydrate, where the "sodium perborate monohydrate/sodium oxoborate ratio by weight is at least 1.5:1." See Col. 2, lines 52-54. Further, the anhydrous sodium perborate of Green et al. is formed by heating "not more than 120°C." See column 4, lines 23-31. Thus, because ESPB of the present invention is formed by heating more than 120°C, Green et al. does not teach or suggest the ESPB component of the present invention. Additionally, Green et al. is a liquid detergent,

whereas the present invention can contain up to 50% liquid ingredient(s), as claimed on the independent claims, and still remain a dry composition.

Thus, Kemper et al., Baillely et al. and Green et al. do not anticipate claims 1, 19 or 35, and Applicants respectfully request that the rejections be withdrawn.

Because independent claims 1, 19 and 35 are allowable over the prior art of record, their dependent claims 5, 10, 12, 17, 18, 24, 34 and 36-37 are allowable as a matter of law, because these dependent claims contain all features/elements/steps of their respective independent claims. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the allowability of claims 1, 19 and 35, these dependent claims recite further features/steps and/or combinations of features/steps, as is apparent by examination of the claims themselves, that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable. By way of example, claims 9 and 26 claim a solvent that comprises 2-butoxyethanol, which is neither taught nor suggested by the cited references.

Response To Claim Rejections Under 35 U.S.C. Section 103

Claims 1-50 have been rejected under 35 U.S.C. Section 103(a) as purportedly being obvious over Baillely et al., and Green et al., separately. Claim 33 has been canceled, thus rendering this rejection moot. With respect to claims 1-32 and 34-50, both Baillely et al. and Green et al. fail to establish a *prima facie* case of obviousness. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as

being obvious based upon a reference, the cited reference must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claims at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

Independent claims 1, 19, 35, 39, 43 and 47 are not obvious over Baillely et al. because of the feature of these claims, "expanded anhydrous sodium perborate." It would not have been obvious or even possible for one skilled in the art to take the teachings of Baillely et al., and substitute the anhydrous perborate salt of Baillely et al. for the expanded sodium perborate (ESPB) of the present invention to form the compositions of the independent claims. The highest temperature used to form the anhydrous perborate salt of Baillely et al. is 120°C, but "more preferably between 40°C and 80°C." See page 4, last paragraph. As noted previously, in order to form the ESPB of the present invention, the composition is heated above 120°C. Consequently, Baillely et al. does not render the independent claims obvious in that Baillely et al. teaches a different composition that is produced using a different method, and nowhere suggests the need or desirability of the present invention.

In addition, ESPB of the present invention is used as a carrier for liquid ingredients, whereas the oxoborate of Baillely et al. is coated and used as an effervescent/bleaching ingredient. Nothing in Baillely et al. suggests the carrier of claims 1, 19, 35, 39, 43 and 47. Applicants therefore respectfully request that the rejections be withdrawn.

Similarly, with respect to Green et al., it would not have been obvious to one skilled in the art to take the disclosure and teachings of Green et al. and substitute the anhydrous sodium perborate of Green et al. for ESPB of the present invention. Moreover, Green et al. specifically teaches away from the present invention because Green et al. specifically teaches forming the anhydrous sodium perborate by heating to a temperature of "not more than 120°C." See column 4, lines 23-31. ESPB of the present invention, which is of a different physical and chemical nature than anhydrous sodium perborate or Green et al., is not formed unless the monohydrate starting material is heated to a temperature more than 120°C.

Additionally, Green et al. is directed to a liquid detergent. The present invention, as claimed in claims 1, 19, 35, 39, 43 and 47, includes a liquid ingredient loaded onto a carrier of ESPB. The ESPB adsorbs the liquid ingredients, thus rendering a dry composition. By disclosing a liquid detergent, Green et al. teaches away from the present independent claims. Thus, Green et al. does not render claims 1, 19, 35, 39, 43 and 47 obvious and the Applicants respectfully request that these rejections be withdrawn as well.

Because independent claims 1, 19, 35, 39, 43 and 47 are allowable over the prior art of record, their dependent claims 2-18, 20-32, 34, 36-38, 40-42, 44-46 and 48-50 are allowable as a matter of law, because these dependent claims contain all features/elements/steps of their respective independent claims. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the

allowability of the independent claims, these dependent claims recite further features/steps and/or combinations of features/steps, as is apparent by examination of the claims themselves, that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable. For example, the feature of claim 26 "wherein the step of providing a glycol ether comprises providing 2-butoxyethanol" is not shown or suggested by either Baillely et al. or Green et al.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-32 and 34-50 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

Cynthia J. Lee
Cynthia J. Lee
Registration No. 46,033

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington D.C. 20231, on 4/2/02.

Diane L. Simmons
Signature



In accordance with 37 C.F.R. § 1.121, please find below the amended claims in which the inserted language is underlined ("__") and the deleted language is enclosed in brackets ("[]"):

1. (Once Amended) An effervescent [compound] composition comprising:
a liquid ingredient in an amount [of] from more than 0% up to approximately 50% by weight of the [compound] composition; and
a carrier for the liquid ingredient, wherein the carrier is expanded anhydrous sodium perborate.
2. (Once Amended) The effervescent [compound] composition of claim 1, further including an effervescent system in an amount of up to approximately 50% by weight of the [compound] composition.
3. (Once Amended) The [compound] composition of claim 2, wherein the effervescent system comprises:
an acid and one or more of sodium bicarbonate; potassium bicarbonate; sodium carbonate and potassium carbonate.
4. (Once Amended) The [compound] composition of claim 1, wherein the expanded anhydrous sodium perborate is made from the process of dehydration of sodium perborate monohydrate.

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5. (Once Amended) The [compound] composition of claim 1, wherein the liquid is a solvent.
6. (Once Amended) The [compound] composition of claim 5, wherein the solvent comprises a glycol.
7. (Once Amended) The [compound] composition of claim 5, wherein the solvent comprises an alcohol.
8. (Once Amended) The [compound] composition of claim 5, wherein the solvent comprises a glycol ether.
9. (Once Amended) The [compound] composition of claim 8, wherein the solvent comprises 2-butoxyethanol.
10. (Once Amended) The [compound] composition of claim 1, further comprising a bleaching [compound] composition.
11. (Once Amended) The [compound] composition of claim 1, further comprising an anti-redeposition agent.
12. (Once Amended) The [compound] composition of claim 1, further comprising a binder.
13. (Once Amended) The [compound] composition of claim 1, further comprising a lubricant.

14. (Once Amended) The [compound] composition of claim 1, further comprising a color.

15. (Once Amended) The [compound] composition of claim 1, further comprising an optical brightener.

16. (Once Amended) The [compound] composition of claim 1, further comprising a fragrance.

17. (Once Amended) The [compound] composition of claim 1, further comprising a surfactant.

18. (Once Amended) The [compound] composition of claim 17, wherein the surfactant is selected from the group consisting of: synthetic anionic surfactants which are generally water-soluble; alkali metal salts of organic sulfates and sulfonates; non-ionic surfactants which are generally the reaction products of alkylene oxide with alkyl phenol or primary or secondary alcohols; amine oxides; phosphine oxides; dialkyl sulphoxides; amphoteric surfactants; zwitterionic surfactants; and soaps.

19. (Once Amended) A method for making an effervescent [compound] composition comprising the steps of:

- providing a liquid ingredient in an amount from more than 0% up to approximately 50% by weight of the [compound] composition;
- providing a liquid ingredient;
- providing a carrier for the liquid ingredient, the carrier including expanded anhydrous sodium perborate; and

mixing the liquid ingredient with the carrier for the liquid ingredient, thereby producing a free-flowing effervescent [compound] composition.

20. (Once Amended) The method of claim 19, wherein the step of providing a liquid ingredient comprises:

providing a solvent that is both hydrophilic and has low solubility with effervescent ingredients in an amount from more than 0% up to approximately 50% by weight of the [compound] composition;

providing a slow dissolving ingredient; and

mixing the solvent with the slow dissolving ingredient to form a liquid ingredient mixture.

22. (Once Amended) The method of claim 19, further comprising the steps of:

compressing the effervescent [compound] composition; and

forming granules of the effervescent [compound] composition.

23. (Once Amended) The method of claim 19, further comprising the steps of:

compressing the effervescent [compound] composition; and

forming a tablet from the effervescent [compound] composition.

35. (Once Amended) A detergent composition comprising:

a liquid ingredient in an amount [of] from more than 0% up to approximately 50% by weight of the [compound] composition; and

a carrier for the liquid ingredient, wherein the carrier is expanded anhydrous sodium perborate.

39. (Once Amended) A carpet cleaner composition comprising:

a liquid ingredient in an amount [of] from more than 0% up to approximately 50% by weight of the [compound] composition; and

a carrier for the liquid ingredient, wherein the carrier is expanded anhydrous sodium perborate.

43. (Once Amended) An all-purpose cleaner composition comprising:

a liquid ingredient in an amount [of] from more than 0% up to approximately 50% by weight of the [compound] composition; and

a carrier for the liquid ingredient, wherein the carrier is expanded anhydrous sodium perborate.

47. (Once Amended) A glass cleaner composition comprising:

a liquid ingredient in an amount [of] from more than 0% up to approximately 50% by weight of the [compound] composition; and

a carrier for the liquid ingredient, wherein the carrier is expanded anhydrous sodium perborate.